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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,193	11/30/2000	Etsuo Morita	09792909-4714	4426

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07/07/2004

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EXAMINER

SONG, MATTHEW J

ART UNIT	PAPER NUMBER
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1765

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/728,193

Applicant(s)

MORITA, ETSUO

Examiner

Matthew J Song

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): 112 first and second paragraph rejections of claim 25-26.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1,2, 4-20 and 23-26.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

NADINE G. NORTON
SUPERVISORY PATENT EXAMINER



Response to Arguments

Applicant's arguments filed 6/16/2004 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Pribat et al teaches the width of the apertures affects the thickness of a monocrystalline silicon layer deposited with the apertures (col 7, ln 45 to col 8, ln 5). Pribat teaches various size of apertures and bands and that the size of the affects the thickness of the monocrystalline silicon layer, which suggest the aperture size is a result effect variable, which can be optimized through routine experimentation. The pitch will be different because the pitch is dependent on the width of the stripe and the width of the interval of the stripe, note page 9 of the specification. Pitch will inherently be changed when the interval and stripe width are changed. Although, Pribat does not teach pitch can be changed, Pribat does teach the individual elements of pitch can be changed, which will affect the pitch of the pattern. Furthermore, Figure 14 shows a slightly different pitch between the patterns.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching,

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suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Tsuda et al teaches it is important to select the relationship between the size of each opening of the first mask and the stripe width of the second mask, depending upon required characteristics of a light emitting device. The elements that make of a patterns pitch, the width of the stripe and the interval, are known in the art to be result effective variables. Therefore, the pitch of a pattern inherently is known to be a result effective variable.

Applicant's argument that Fleming does not teach two separate patterns having different pitches from one another is noted but is not found persuasive. The examiner admitted Fleming does not explicitly teach using patterns with different pitches. However, Fleming does teach using a variety of shapes, sizes and orientations **and the shape, size and spacing can vary throughout the structured layer**. Applicant teaches using different sizes and spacings to obtain a different pitch, which inherently results in different pitches within a layer, note Figures 3A and 3B. Fleming teaches changes to shape and spacing throughout a layer, which is the technique employed by applicant to obtain different pitches. Therefore, different pitches inherently occur when size and spacing are changed throughout a layer. Fleming does not teach a change in size and spacing between layers, where the pitch can remain the same, but they can occur within in the layer, which inherently will cause a variation in pitch within the layer, note Figures 3A and 3B. The layers show in Figures 3A and 3B have more than one pitch within the layer; therefore a layer overlying it inherently must have at least one pitch which is different.